

§ 1640.3

any of its headquarters, district, area, local, or field offices.

Federal financial assistance shall have the meaning, with respect to each section 504 agency, as defined in such agency's regulations implementing section 504 for Federally-assisted programs.

Program or activity shall have the meaning defined in the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394, 29 U.S.C. 794), as amended.

Public entity means:

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act, 45 U.S.C. 502(8)).

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under such program.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394, 29 U.S.C. 794), as amended.

Section 504 agency means any Federal department or agency that extends Federal financial assistance to programs or activities of recipients.

Title I means title I of the ADA.

Title II means subtitle A of title II of the ADA.

§ 1640.3 Exchange of information.

The EEOC, section 504 agencies, and designated agencies shall share any information relating to the employment policies and practices of a respondent that may assist each agency in carrying out its responsibilities, to the extent permissible by law. Such information shall include, but is not limited to, complaints, charges, investigative files, compliance review reports and

29 CFR Ch. XIV (7-1-12 Edition)

files, affirmative action programs, and annual employment reports.

§ 1640.4 Confidentiality.

(a) When a section 504 agency or a designated agency receives information obtained by the EEOC, such agency shall observe the confidentiality requirements of section 706(b) and section 709(e) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(b) and 2000e-8(e)), as incorporated by section 107(a) of the ADA, to the same extent as these provisions would bind the EEOC, except when the agency receives the same information from a source independent of the EEOC. Agency questions concerning the confidentiality requirements of title I shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel, the EEOC.

(b) When the EEOC receives information from a section 504 or a designated agency, the EEOC shall observe any confidentiality requirements applicable to that information.

§ 1640.5 Date of receipt.

A complaint or charge of employment discrimination is deemed to be filed, for purposes of determining timeliness, on the date the complaint or charge is first received by a Federal agency with section 504 or ADA jurisdiction, regardless of whether it is subsequently transferred to another agency for processing.

§ 1640.6 Processing of complaints of employment discrimination filed with an agency other than the EEOC.

(a) *Agency determination of jurisdiction.* Upon receipt of a complaint of employment discrimination, an agency other than the EEOC shall:

(1) Determine whether it has jurisdiction over the complaint under section 504 or under title II of the ADA; and

(2) Determine whether the EEOC may have jurisdiction over the complaint under title I of the ADA.

(b) *Referral to the Civil Rights Division.* If the agency determines that it does not have jurisdiction under section 504 or title II, and determines that the EEOC does not have jurisdiction under title I, the agency shall promptly refer

the complaint to the Civil Rights Division. The Civil Rights Division shall determine if another Federal agency may have jurisdiction over the complaint under section 504 or title II, and, if so, shall promptly refer the complaint to a section 504 or a designated agency with jurisdiction over the complaint.

(c) *Referral to the EEOC*—(1) *Referral by an agency without jurisdiction.* If an agency determines that it does not have jurisdiction over a complaint of employment discrimination under either section 504 or title II and determines that the EEOC may have jurisdiction under title I, the agency shall promptly refer the complaint to the EEOC for investigation and processing under title I of the ADA.

(2) *Referral by a section 504 agency.* (i) A section 504 agency that otherwise has jurisdiction over a complaint of employment discrimination under section 504 shall promptly refer to the EEOC, for investigation and processing under title I of the ADA, any complaint of employment discrimination that solely alleges discrimination against an individual (and that does not allege discrimination in both employment and in other practices or services of the respondent or a pattern or practice of employment discrimination), unless:

(A) The section 504 agency determines that the EEOC does not have jurisdiction over the complaint under title I; or

(B) The EEOC has jurisdiction over the complaint under title I, but the complainant, either independently, or following receipt of the notification letter required to be sent to the complainant pursuant to paragraph (c)(2)(ii) of this section, specifically requests that the complaint be investigated by the section 504 agency.

(ii) Prior to referring an individual complaint of employment discrimination to the EEOC pursuant to paragraph (c)(2)(i) of this section (but not prior to making such a referral pursuant to paragraph (c)(1) of this section), a section 504 agency that otherwise has jurisdiction over the complaint shall promptly notify the complainant, in writing, of its intention to make such a referral. The notice letter shall:

(A) Inform the complainant that, unless the agency receives a written request from the complainant within twenty days of the date of the notice letter requesting that the agency retain the complaint for investigation, the agency will forward the complaint to the EEOC for investigation and processing; and

(B) Describe the basic procedural differences between an investigation under section 504 and an investigation under title I, and inform the complainant of the potential for differing remedies under each statute.

(3) *Referral by a designated agency.* A designated agency that does not have section 504 jurisdiction over a complaint of employment discrimination and that has determined that the EEOC may have jurisdiction over the complaint under title I shall promptly refer the complaint to the EEOC.

(4) *Processing of complaints referred to the EEOC.* (i) A complaint referred to the EEOC in accordance with this section by an agency with jurisdiction over the complaint under section 504 shall be deemed to be a dual-filed complaint under section 504 and title I. When a section 504 agency with jurisdiction over a complaint refers the complaint to the EEOC, the section 504 agency shall defer its processing of the complaint pursuant to §1640.10, pending resolution by the EEOC.

(ii) A complaint referred to the EEOC by an agency that has jurisdiction over the complaint solely under title II (and not under section 504) will be treated as a complaint filed under title I only.

(iii) Any complaint referred to the EEOC pursuant to this section shall be processed by the EEOC under its title I procedures.

(d) *Retention by the agency for investigation*—(1) *Retention by a section 504 agency.* A section 504 agency shall retain a complaint for investigation when the agency determines that it has jurisdiction over the complaint under section 504, and one or more of the following conditions are met:

(i) The EEOC does not have jurisdiction over the complaint under title I; or

(ii) The EEOC has jurisdiction over the complaint, but the complainant elects to have the section 504 agency

§ 1640.7

process the complaint and the section 504 agency receives a written request from the complainant for section 504 agency processing within twenty days of the date of the notice letter required to be sent pursuant to paragraph (c)(2)(ii) of this section; or

(iii) The complaint alleges discrimination in both employment and in other practices or services of the respondent that are covered by section 504; or

(iv) The complaint alleges a pattern or practice of employment discrimination.

(2) *Retention by a designated agency.* A designated agency that does not have jurisdiction over the complaint under section 504 shall retain a complaint for investigation when the agency determines that it has jurisdiction over the complaint under title II of the ADA and that the EEOC does not have jurisdiction over the complaint under title I.

(3) *Processing of complaints retained by an agency.* Any complaint retained for investigation and processing by an agency pursuant to paragraphs (d)(1) and (d)(2) of this section will be investigated and processed under section 504, title II, or both, as applicable, and will not be considered to be dual filed under title I.

§ 1640.7 Processing of charges of employment discrimination filed with the EEOC.

(a) *EEOC determination of jurisdiction.* Upon receipt of a charge of employment discrimination, the EEOC shall:

(1) Determine whether it has jurisdiction over the charge under title I of the ADA. If it has jurisdiction, except as provided in paragraph (b)(2) of this section, the EEOC shall process the charge pursuant to title I procedures.

(2) If the EEOC determines that it does not have jurisdiction under title I, the EEOC shall promptly refer the charge to the Civil Rights Division. The Civil Rights Division shall determine if a Federal agency may have jurisdiction over the charge under section 504 or title II, and, if so, shall refer the charge to a section 504 agency or to a designated agency with jurisdiction over the complaint.

29 CFR Ch. XIV (7-1-12 Edition)

(b) *Retention by the EEOC for investigation.* (1) The EEOC shall retain a charge for investigation when it determines that it has jurisdiction over the charge under title I.

(2) *Referral to an agency.* Any charge retained by the EEOC for investigation and processing will be investigated and processed under title I only, and will not be deemed dual filed under section 504, except that ADA cause charges (as defined in 29 CFR 1601.21) that also fall within the jurisdiction of a section 504 agency and that the EEOC (or the Civil Rights Division, if such a charge is against a government, governmental agency, or political subdivision) has declined to litigate shall be referred to the appropriate section 504 agency for review of the file and any administrative or other action deemed appropriate under section 504. Such charges shall be deemed complaints, dual filed under section 504, solely for the purposes of the agency review and action described in this paragraph. The date of such dual filing shall be deemed to be the date the complaint was received by the EEOC.

§ 1640.8 Processing of complaints or charges of employment discrimination filed with both the EEOC and a section 504 agency.

(a) *Procedures for handling dual-filed complaints or charges.* As between the EEOC and a section 504 agency, except as provided in paragraph (e) of this section, a complaint or charge of employment discrimination that is dual filed with both the EEOC and a section 504 agency shall be processed as follows:

(1) *EEOC processing.* The EEOC shall investigate and process the charge when the EEOC determines that it has jurisdiction over the charge under title I and the charge solely alleges employment discrimination against an individual, unless the charging party elects to have the section 504 agency process the charge and the section 504 agency receives a written request from the complainant for section 504 agency processing within twenty days of the date of the notice letter required to be sent pursuant to § 1640.6(c)(2)(ii).

(2) *Section 504 agency processing.* A section 504 agency shall investigate and process the complaint when the